

ORIGINAL
DEF
C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI and FRANK
FINKEL, Trustees of Local 282
International Brotherhood of Teamsters
Welfare, Pension, Annuity, Job Training
and Vacation Sick Leave Trust Funds,

Plaintiff,

MEMORANDUM AND ORDER

Case No. 09-CV-5454 (FB) (JO)

-against-

C.F.I. ASSOCIATES, INC.,

Defendant.
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Appearances:

For the Plaintiff:

AVRAM H. SCHREIBER, ESQ.
40 Exchange Place, Suite 1300
New York, NY 10005

BLOCK, Senior District Judge:

On March 10, 2011, Magistrate Judge Orenstein issued a Report and Recommendation ("R&R") recommending that a default judgment be entered against defendant, C.F.I. Associates, Inc. ("CFI"), in the total amount of \$78,667.23. The R&R recited that "[a]ny objections to this Report and Recommendation must be filed no later than March 28, 2011," and that "[f]ailure to file objections within this period waives the right to appeal the district court's order." R&R at 21-22. On March 11, 2011, plaintiff's counsel served a copy of the R&R on CFI at its last known address. To date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. See *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

The R&R contains no error, let alone plain error. Accordingly, the Court adopts it without *de novo* review and directs the Clerk to enter judgment accordingly.

SO ORDERED.

s/ Judge Frederic Block

~~FREDERIC BLOCK~~
Senior United States District Judge

Brooklyn, New York
March 31, 2011